

**MILMAN LABUDA LAW GROUP PLLC**

3000 MARCUS AVENUE  
SUITE 3W8  
LAKE SUCCESS, NY 11042

**MEMO ENDORSED**

TELEPHONE (516) 328-8899  
FACSIMILE (516) 328-0082

August 9, 2021

**VIA ECF & E-MAIL**

United States District Court  
Southern District of New York  
Attn: Hon. Katherine Polk Failla, U.S.D.J.  
40 Foley Square, Courtroom 618  
New York, NY 10007-1312  
failla\_nysdchambers@nysd.uscourts.gov

**Re:     Martinez-Cruz, *et ano.* v. York Bagels Inc., *et al.***  
**Case No: 1:20-cv-4084 (KPF) (SN)**  
**MLLG File No.: 168-2020**

Dear Judge Failla:

This firm represents the Defendants in the above-referenced case. Defendants write to respectfully request that this Court “so Order” the enclosed fully executed Stipulation of Vacatur of Judgment. As set forth below, Plaintiffs consent to the instant application.

**Relevant Factual Background & Procedural History**

By way of background, this federal & state wage-and-hour case was resolved pursuant to Rule 68 of the Federal Rules of Civil Procedure (hereinafter referred to as “Rules” or “Rule”) in which a judgment was entered on June 7, 2021. The judgment has been paid in full and the parties have agreed that Defendants would make the instant application with Plaintiffs’ consent.

**This Court Should “so Order” the Stipulation of Vacatur of Judgment**

Defendants respectfully submit that because the parties have agreed and contemplated to have the June 7, 2021 judgment vacated upon payment in full, this Court should “so Order” the enclosed Stipulation of Vacatur of Judgment. Further, Rule 60(b)(5) provides that, on motion<sup>1</sup> and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding because the judgment has been satisfied, released, or discharged.

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<sup>1</sup> Defendants respectfully request leave of this Court to make the instant request as a letter motion rather than a formal motion (as required by Local Civil Rule 7.1) in accordance with Rule 1, which requires that the Rules be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. See Fed. R. Civ. P. 1 (emphasis added). Because the parties have agreed to the requested relief in the Agreement, Defendants respectfully submit that this Court grant leave to file the instant request as a letter motion rather than a formal motion.

Here, Defendants further respectfully submit that all of their obligations under both the June 7, 2021 judgment have been satisfied. Rule 60(b)(6) also provides that the court may relieve a party from a final judgment for any other reason that justifies relief; Defendants respectfully submit that the parties' agreement to vacate the foregoing judgment upon satisfaction constitutes such a reason.

Accordingly, this Court should "so Order" the Stipulation of Vacatur of Judgment both pursuant to the parties' agreement and under Rules 60(b)(5) and 60(b)(6). Defendants thank this honorable Court for its time, attention, and anticipated courtesies in this case, and submit a courtesy copy of this electronically filed letter via email pursuant to ¶ 2(B) of this Court's Individual Rules of Practice in Civil Cases.

Dated: Lake Success, New York  
August 9, 2021

Respectfully submitted,

**MILMAN LABUDA LAW GROUP PLLC**

/s/ Emanuel Kataev, Esq.

Emanuel Kataev, Esq.

3000 Marcus Avenue, Suite 3W8

Lake Success, NY 11042-1073

(516) 328-8899 (office)

(516) 303-1395 (direct dial)

(516) 328-0082 (facsimile)

emanuel@mllaborlaw.com

*Attorneys for Defendants*

Enclosure.

**VIA ECF**

Allyn & Fortuna LLP

Attn: Nicholas Fortuna and Paula Lopez, Esqs.

1010 Avenue of the Americas

Suite 302

New York, NY 10018-0023

nfortuna@allynfortuna.com

plopez@allynfortuna.com

*Attorneys for Plaintiff*

**VIA ECF**

United States District Court

Southern District of New York

Attn: Hon. Sarah Netburn, U.S.M.J.

40 Foley Square, Courtroom 219

New York, NY 10007-1312

Application GRANTED. The Clerk of Court is directed to vacate the judgment, dated June 7, 2021, that was entered in this case. (Dkt. #39). Following this vacatur, the Clerk of Court is directed to terminate all pending motions and terminate the case.

The Court will separately so-order the parties' stipulation to this effect.

Date: August 12, 2021  
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE